



UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

SPENCER PIERCE,

Plaintiff,

v.

DIRECTORS OF NEVADA DOC, *et al.*,

Defendants.

3:07-CV-202-RCJ(RAM)

**ORDER**

Presently before the Court is Plaintiff's Motion For Reconsideration (#97) filed on February 5, 2010. Defendants filed their Opposition to Plaintiff's Motion for Reconsideration (#98) on February 18, 2010 and Plaintiff filed his Reply (#99) on March 1, 2010.

**BACKGROUND**

Plaintiff is an inmate who resides at Ely State Prison (ESP) in Nevada. Plaintiff a *pro se* litigant, filed this action pursuant to 42 U.S.C. §1983. On September 9, 2008, Plaintiff filed a third amended complaint seeking monetary and injunctive relief against Defendants in their individual and official capacities.

In Count I and II, Plaintiff claims that prison officials have manifested a deliberate indifference to his serious medical needs in violation of the Eighth Amendment by refusing him treatment to his injured left fifth finger and failed to treat his shoulder and chest injury.

In Count III, Plaintiff alleges that prison officials have denied him access to the courts in violation of the First Amendment by denying him access to Iowa law.

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1 Defendants moved to dismiss because Plaintiff failed to exhaust the available  
2 administrative appeals or for summary judgment because Plaintiff cannot prove a legal  
3 element in each of his claims.

4 This action was referred to U.S. Magistrate Judge Robert A. McQuaid, Jr., pursuant to  
5 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4. On October 27, 2009 the Magistrate Judge submitted  
6 his Report and Recommendation (#90) recommending that this Court enter an order granting  
7 Defendants' Motion for Summary Judgment (#60) and denying as moot Plaintiff's Motion for  
8 Preliminary Injunction (#87). On October 16, 2009, Plaintiff filed his Objection to Magistrate  
9 Judge's Report and Recommendation (#91). On December 17, 2009, Defendants filed their  
10 Opposition to Plaintiff's Objection to Magistrate Judge's Report and Recommendation (#93)  
11 and on December 31, 2009 Plaintiff filed his Reply to Defendants' Opposition to Plaintiff's  
12 Objection to Magistrate Judge's Report and Recommendation (#94).

13 On January 26, 2010, the Court entered its Order accepting and adopting the  
14 Magistrate Judge's Report and Recommendation (#90) granting Defendants' Motion for  
15 Summary Judgment (#60), and denied Plaintiff's Objection to Magistrate Judge's Report and  
16 Recommendation (#91). Judgment in a Civil Case (#96) was entered on January 26, 2010.

#### 17 LEGAL STANDARD

18 Motions to reconsider are generally avoided. See e.g., United States v. Mills, 810 F.2d  
19 907, 909 (9th Cir. 1987) (stating that "[t]he law of the case doctrine provides that in order to  
20 maintain consistency during the course of a single case, reconsideration of questions  
21 previously decided should be avoided."); see also Earl Old Person v. Brown, 312 F.3d 1036,  
22 1039 (9th Cir. 2002) (stating that exceptions to the law of the case doctrine include the  
23 following: (1) the prior decision is clearly erroneous and its enforcement would work a manifest  
24 injustice; (2) intervening controlling authority; and (3) substantially different evidence). That  
25 notwithstanding, Fed. R. Civ. P. 60(b) provides that "[o]n motion and upon such terms as are  
26 just, the court may relieve a party . . . from a final judgment, order, or proceeding for the  
27 following reasons: (1) mistake, inadvertence, surprise or excusable neglect . . . ."

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1 In this case, Defendant requests that the Court reconsider its Order adopting the  
2 Magistrate's Report and Recommendation granting Defendants' Motion for Summary  
3 Judgment, issued January 26, 2010. Defendant argues that he has newly discovered  
4 evidence that warrants reconsideration. He asserts that E.K. McDaniel perjured himself in his  
5 declaration where he stated that inmates are not allowed to have, or permitted to possess a  
6 roll of tape. Defendant concludes that the Magistrate Judge's relied upon the declaration of  
7 E.K. McDaniel in granting summary judgment to the defendants.

8 Defendants deny the allegations of perjury and submit that defendants assertions are  
9 insufficient grounds for a motion for reconsideration. Defendants note that he presented the  
10 same assertion, that inmates could purchase tape, in his Objections to the Magistrate's Report  
11 and Recommendation (#91) at 4,8. Because the evidence was presented to the Court before  
12 it made its decision, it is not newly discovered and is not grounds for reconsideration.

13 **CONCLUSION**

14 IT IS HEREBY ORDERED that Plaintiff's Motion for Reconsideration (#97) is DENIED.  
15 IT IS SO ORDERED.

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17 DATED: This \_26th \_ day of July, 2010.

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21 ROBERT C. JONES  
22 UNITED STATES DISTRICT JUDGE  
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